# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. 21

EDWARD P. BASSETT AND E. H. HARGER, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

FILED OCTOBER 7, 1889.

# SUPREME COURT OF THE UNITED STATES.

## No. 262.

---

EDWARD P. BASSETT AND E. H. HARGER, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

---

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

---

INDEX.


| | Original. | Print. |
|---|---|---|
| Assignment of errors | 1 | 2 |
| Writ of error | 2 | 3 |
| Citation | 3 | 3 |
| Declaration | 4 | 4 |
| Subpœna | 6 | 5 |
| Return | 7 | 7 |
| Defendant's plea | 7 | 7 |
| Replication | 10 | 9 |
| Judgment | 11 | 9 |
| Motion to continue | 12 | 10 |
| Agreed statement of facts | 12 | 11 |
| Continuance | 15 | 13 |
| New trial ordered | 16 | 14 |
| Judgment | 16 | 14 |
| Clerk's certificate | 17 | 15 |

STATE OF MISSOURI, *ss:*

I, O. T. Fishback, clerk of the supreme court, held at St. Louis, of the State of Missouri, in obedience to the mandate of the within writ, herewith transmit to the honorable Supreme Court of the United States, at Washington, a full, true, and complete transcript of the record and proceedings in the within entitled cause, as fully as the same remains of record and on file in my office.

In testimony whereof, I hereunto set my hand, and affix the seal of said court, at office, in the city of St. Louis, this second day of August, A. D. eighteen hundred and sixty-seven.

[SEAL.]

O. T. FISHBACK, *Clerk.*
Per E. P. McCARTY, *Dep.*

1 Supreme Court of the United States.—In error of the December term, A. D. 1867.

ORRIN G. OLMSTEAD, EDWARD P. BASSETT, and E. H. Hargar,
*vs.*
THE UNITED STATES OF AMERICA.

Afterwards, to wit, on the first Monday of December, in this same term, before the justices of the Supreme Court of the United States, at the capitol in the city of Washington, come the said Orrin G. Olmstead, Edward P. Bassett, and E. H. Hargar, by F. T. Backus, their attorney, and say that in the record and proceedings aforesaid, there is manifest error in this to wit: that by the record aforesaid, it appears that the judgment aforesaid given, was given for the said United States of America, against the said Orrin G. Olmstead, Edward P. Bassett, and E. H. Hargar, whereas, by the law of the land, the said judgment ought to have been given for the said Orrin G. Olmstead, Edward P. Bassett, and E. H. Hargar, against the said United States of America; and the said Orrin G. Olmstead, Edward P. Bassett, and E. H. Hargar, pray that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment, &c.

F. T. BACKUS,
*Att'y for Pl'ffs in error.*

2 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the circuit court of the United States, for the sixth circuit and northern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea, which is in the said circuit court, before you

between the United States of America, plaintiff, and Edward P. Bassett & E. H. Harger, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, on the first Monday in the month of December next, in the said Supreme Court, then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness, the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 12th day of August, in the year of our Lord one thousand eight hundred and sixty-seven and of the independence of the United States of America the 92d.

Attest:

[SEAL.] EARL BILL, *Clerk.*

3 THE UNITED STATES OF AMERICA:

Supreme Court of the United States, to the United States of America' greeting:

Whereas, Edward P. Bassett & E. H. Harger, have obtained the allowance of our writ of error to the circuit court of the United States, within and for the northern district of Ohio, directed to remove into the said Supreme Court, to be holden at the city of Washington on the first Monday in the month of December next, the record of a certain plaint, process, proceedings and judgment in an action of debt, wherein you, the said the United States of America in that action, lately recovered against the said Edward P. Bassett & E. H. Harger, for the sum of two thousand dollars debt, six cents damages and costs, as by the said record in the said circuit court now remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said Edward P. Bassett and E. H. Harger, we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alledged, if any there be, you are, therefore, hereby commanded and cited, to be and appear before the judges of the said Supreme Court, at the city of Washington at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness, the Honorable Salmon P. Chase, Chief Justice of the

United States of America, this 12th day of August, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the 92d.

[SEAL.] CHAS. T. SHERMAN,
*U. S. Judge and one of the Judges of said court.*

NORTHERN DISTRICT OF OHIO, *ss:*

I hereby acknowledge service of a copy of the within citation for the United States of America, defendants in error.

August 12, 1867.

F. J. DICKMAN,
*U. S. District Attorney.*

Endorsed: 1,489—Edward B. Bassett and E. H. Harger *vs.* The United States. Citation in error.

4 At a stated term of the circuit court of the United States for the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in May, being the seventh day of that month, in the year of our Lord one thousand eight hundred and sixty-seven, and of the independence of the United States of America the ninety-first. Present, the Honorable Charles T. S. Sherman, district judge.

Among the proceedings then and there had were the following, to wit:

No. 1,489.

THE UNITED STATES OF AMERICA
*vs.*
ORRIN T. OLMSTEAD, EDWARD P. BASSETT, & E. H. Harger. } Debt.

Be it remembered, that heretofore, to wit, on the 27th day of June, in the year of our Lord one thousand eight hundred and sixty-five, came the plaintiff, by their attorney, and filed in the clerk's office of said court a certain precipe and declaration herein, in the words and figures following, to wit:

Circuit court of the United States, seventh circuit and northern district of Ohio.

THE UNITED STATES OF AMERICA
*vs.*
ORRIN T. OLMSTEAD, EDWARD P. BASSETT, & E. H. Harger. } Debt.

Issue summons in the above-entitled suit, returnable according to rules of court, and endorse suit brought on def'ts recognizance to

pl'ff in $2,000, entered into this court June 14th, and forfeited June 15th, A. D. 1865. Debt, $2,000; damages, $500.

J. M. ROOT,
*U. S. Dist. Att'y.*

Circuit court of the United States of America, for the seventh circuit and the northern district of Ohio.

Declaration.

The United States of America, plaintiff in this suit, complains of Orrin G. Olmstead, Edward P. Bassett, and E. H. Harger, defendants in this suit, of a plea that they render unto the said plaintiff the sum of two thousand dollars, which they owe to, and unjustly detain, from the said plaintiff, for that whereas, at the May term of this the court aforesaid, in the year of our Lord one thousand eight hundred and sixty-five, to wit, on the 14th day of June, in the year aforesaid, at Cleveland, in the district aforesaid, and in and before this, the court aforesaid, came the defendants, in their own proper persons; and an indictment against the said Orrin G. Olmstead, for stealing letters from a post-office in the district aforesaid, being then depending in this the court aforesaid, entered into their recognizance with a certain condition thereto annexed, by which said recognizance, the said Orrin G. Olmstead, as principal, and the said Edward P. Bassett & E. H. Harger, as his sureties, jointly and severally acknowledged themselves to owe to the said plaintiff the sum of two thousand dollars, to be levied of their and each of their goods and chattels, lands and tenements, to and for the use of the United States in case default should be made in the said condition of the said recognizance, whereby it is, and then and there was provided, thus: If the said Orrin G. Olmstead should be and personally appear there, in this the court aforesaid, from day to day, during the term aforesaid, to answer to the aforesaid indictment against him, then pending as aforesaid in this the court aforesaid, and not depart this the court aforesaid, without leave thereof, then the aforesaid recognizance to be void, otherwise to remain in full force and effect. And, whereas, afterwards and heretofore, in the term aforesaid, to wit, on the 15th day of June, in the year aforesaid, at Cleveland aforesaid, in the district aforesaid, in this the court aforesaid, the indictment aforesaid being then pending therein by the order of this the court aforesaid, the said Orrin G. Olmstead was duly and three times solemnly called then to come into this the court aforesaid, and answer to the aforesaid indictment, yet the said Orrin G. Olmstead then and there wholly failed and refused so to do, and made default in the aforesaid condition of the recognizance aforesaid; and then and there, by the order of this the court aforesaid, the said Edward P. Bassett & E. H. Harger, and each of them was duly and three times solemnly called then to come into this the court aforesaid, and with them bring the body of the said Orrin G. Olmstead, to answer to the indictment aforesaid, yet they, the said Edward P. Bassett & E. H. Hargar, and each of them, then and there wholly failed or refused so

to do, and made default in the aforesaid condition of the recognizance aforesaid, and then and there this the court aforesaid, ordered the recognizance to be, and by the said order the same then and there was forfeited, as by the records and proceedings of this the court aforesaid, now therein remaining and more fully appears, which last aforesaid order of the court aforesaid, remains in full force, unreversed, unvacated, unchanged, and wholly unsatisfied, whereby, according to the form and effect of the aforesaid recognizance, an action hath accrued to the said plaintiff to demand and have of and from the said defendants, the said sum of two thousand dollars, in form aforesaid acknowledged and above demanded; yet the said defendants, though often requested so to do, have not paid the sum of two thousand dollars above demanded, nor any part thereof to the said plaintiff; but so to do, they, the said defendants, have hitherto wholly neglected and refused, and still do refuse to the damage of the said plaintiff, five hundred dollars. Wherefore, the said plaintiff brings suit, &c.

J. M. ROOT,
*Attorney for United States for district aforesaid.*

And afterwards, to wit, on the 27th day of June, in the year of our Lord one thousand eight hundred and sixty-five, there was issued from the clerk's office of said court a writ of summons herein, in the words and figures following, to wit:

THE UNITED STATES OF AMERICA,
*Northern District of Ohio, ss:*

The President of the United States of America, to the marshal of the northern district of Ohio, greeting:

You are hereby commanded to summon Orrin G. Olmstead, Edward P. Bassett, & E. H. Harger, if they be found in your
7 district, to be and appear in the circuit court of the United States for the northern district of Ohio aforesaid, at Cleveland, on the eleventh day of July next, to answer unto the United States of America of a plea of debt. Debt, two thousand dollars, ($2,000 00;) damages, five hundred dollars, ($500;) and have you then and there this writ.

Witness, the Honorable Salmon P. Chase, Chief Justice of the United States, this 27th day of June, A. D. 1865, and in the 89th year of the independence of the United States of America.

[SEAL.] F. W. GREEN, *Clerk.*

And on the said writ, were the following endorsements, to wit:

Suit brought on def'ts recognizance to pl'ff. in $2,000, entered into in this court, June 14, and forfeited June 15, A. D. 1865. Debt, $2,000; damages, $500. J. M. Root, U. S. dist. attorney.

And afterwards, to wit: on the tenth day of July, in the year of our Lord one thousand eight hundred and sixty-five, the said writ was returned into said clerk's office by said marshal, with his return endorsed thereon as follows, to wit:

NORTHERN DISTRICT OF OHIO, *ss:*

This writ, duly served by delivering to the within named, E. H. Harger, a duly certified copy thereof, at Cleveland, Ohio, June 28th, 1865, and by delivering a like copy to the within named Edward P. Bassett, at Toledo, June 29th, 1865. The said Orrin G. Olmstead, not found in my district after diligent search, and has no residence therein.

EARL BILL,
*U. S. Marshal.*

And afterwards, to wit, on the thirty-first day of July, A. D. 1865, came the defendants, by their attorneys, and filed their plea, which is in the words and figures following, to wit:

Circuit court of the United States of America, for the seventh circuit and northern district of Ohio.

THE UNITED STATES OF AMERICA
*against*
ORRIN G. OLMSTEAD, EDWARD P. BARRETT, and E. H. Harger.

And the said Orrin G. Olmstead, Edward P. Bassett, and E. H. Harger come and defend, &c., and say there is not any record
8 of the said supposed recognizance in the said declaration remaining in the said circuit court of the United States, for the northern district of Ohio, in manner and form as the said plaintiff hath in his declaration alleged, and this they are ready to verify; whereupon, they pray judgment if the said plaintiff ought to have or maintain its said action against them, &c.

And for a further plea in this behalf, by leave of the court, here first had or obtained, the said defendants say the said plaintiff, its action aforesaid, ought not to have and maintain, because they say that on the 23d day of May, 1865, there was pending in and before said circuit court an indictment, of which the following is a copy, to wit:

THE UNITED STATES OF AMERICA:

In the circuit court of the United States, for the seventh circuit and northern district of Ohio, of the May term, in the year of our Lord one thousand eight hundred and sixty-five.

NORTHERN DISTRICT OF OHIO, *ss:*

The grand jurors of the United States of America, duly empannelled, sworn, and charged to enquire of crimes and offences within and for the body of the northern district of Ohio, upon their oaths, present and find that Orrin G. Olmstead, late of the district aforesaid, heretofore, to wit, on the eighteenth day of April, in the year of our Lord one thousand eight hundred and sixty-five, with force and arms, at Toledo, in the district aforesaid, and within the jurisdiction of this court, did then and there steal and take from the post-office of the United States, at said Toledo, forty dollars, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

And the grand jurors aforesaid, upon their oath aforesaid, do further present and find that the said Orrin G. Olmstead, heretofore, to wit, on the eighteenth day of April, in the year of our Lord eighteen hundred and sixty-five, at Toledo aforesaid, in the district aforesaid, and within the jurisdiction of this court, with force and arms unlawfully, did then and there steal and take from the post-
9 office of the United States, at said Toledo, a certain other letter and packet, then lately before put into the post-office of the United States, at Detroit, in the State of Michigan, and in the United States, and directed to First National Bank, Fremont, Ohio, and intended to be conveyed by the mail of the United States from the said post-office at the said Detroit, to the post-office of the United States at Fremont, in the State of Ohio, and which said letter and packet was then and there, to wit. on the said eighteenth day of April, in the year 1865, at the said post-office. at the said Toledo, in the course of such conveyance as aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States.

JOSEPH M. ROOT,
*United States District Attorney.*

That the said Orrin G. Olmstead, having on the said 23d day of May, 1865, pleaded guilty to the charge of said indictment, it was thereupon considered by the court that said Orrin G. Olmstead be imprisoned in the county jail of said Erie county, in said district, for the period of six months from the said 23d day of May, A. D. 1865; and that he pay to the United States a fine of $200 and the costs of his prosecution; and that thereupon the said defendant, Orrin G. Olmstead was committed to the custody of the marshal of said district, and was by him shortly afterwards conveyed to the said county jail, in Erie county, in pursuance of said sentence, and then and there entered upon the expiation of the same.

And the defendants say, that they deny that on the 14th day of June, A. D. 1865, at the time of the alleged entering into the said supposed recognizance by defendants, there was an indictment against the said Orrin G. Olmstead, for stealing letters from a post office in

said district, depending in said court, as in declaration averred; but they say that said indictment in the declaration so alleged to have been pending on the 14th day of June, 1865, in said court, as aforesaid, was the same and identical with the indictment hereinbefore set forth.

Wherefore, the defendants say that the said Orrin G. Olmstead, at the time of the alleged entering into the supposed recognizance by said defendants, stood charged in said court with no offence for which he was amenable to the law, and that the said court had no authority whatever to take said supposed recognizance, or bond or obligation, for the purpose in declaration set forth, and this they are ready to verify. Wherefore, they pray judgment if the said plaintiff its action aforesaid ought to have or maintain, &c.

RANNEY & BOLTON,
*Attorneys for Defendants.*

And afterwards, to wit, on the 30th day of August, A. D. 1865, came the plaintiff, by its attorneys, and filed its replication, which is in the words and figures following, to wit:

Circuit court of the United States of America for the seventh circuit and northern district of Ohio.

THE UNITED STATES OF AMERICA
*vs.*
ORRIN G. OLMSTEAD, EDWARD P. BASSETT, and E. H. Harger.

And the United States, as to the said plea of the said defendants by them first above pleaded, say that the United States, by reason of anything by the said defendants in that plea alleged, ought not to be barred from having and maintaining the aforesaid action of the United States thereof against the said defendants, because the United States say that there is such a record of the said recognizance here, in the said court, as the United States have above in their declaration in that behalf alleged.

And the United States are ready to verify, by the said record of this court, of the May term thereof, in the year of our Lord one thousand eight hundred and sixty-five; and the United States pray that the said term and record may be inspected and seen by the court.

And the said plaintiffs, as to the said plea of the said defendants by them secondly above headed, saith that the said plaintiff ought not to be barred from having and maintaining its aforesaid action thereof, against the said defendants in that plea alleged, because the said plaintiff saith that there is not any record of the said supposed judgment, in the said plea mentioned, remaining in this, the said circuit court of the United States for the seventh circuit

and northern district of Ohio, in manner and form as the said defendants have in their said plea alleged; and this the said plaintiff is ready to verify. Wherefore, the said plaintiff prays judgment and its debt aforesaid, together with the damage, by reason of the detention thereof, to be adjudged to the said plaintiff, &c.

J. M. ROOT,
*Attorney of the United States.*

And afterwards, to wit, at the September term of said court, in the year of our Lord one thousand eight hundred and sixty-five, this cause was continued until the next term of said court.

And afterwards, to wit, at the January term of said court, in the year of our Lord one thousand eight hundred and sixty-six, this cause was continued until the next term of this court.

And afterwards, on the second day of May, in the year of our Lord one thousand and sixty-six, came the parties, by their attorneys—the district attorney on behalf of the United States; and this cause coming on for trial upon the issues joined between the United States and the defendants, served with a process, and neither party requiring a jury, this cause is submitted to the court. And the testimony and arguments of counsel being concluded, the same is taken under advisement by the court.

And afterwards, on the 7th day of May, in the year of our Lord one thousand eight hundred and sixty-six, this cause having been heard, on the second instant, upon the issues joined between the United States, plaintiff, and the said Edward P. Bassett and E. H. Harger, defendants, the summons having been returned "not found" as to the said Orrin G. Olmstead, and taken under advisement by the court, and the court being now fully advised in the premises, and the record alleged and set forth in the said declaration being inspected by the court, and it sufficiently appearing that there is such a record of recognizance and the forfeiture thereof, as the said plaintiffs have in their said declaration alleged, and the court further finding
12 that there is no such record of judgment as the said defendants have in their second plea alleged and set forth; it is, therefore, considered that the United States ought to recover of the said Edward P. Bassett and E. H. Harger, defendants, served with process their debt aforesaid. It is, therefore, considered that the said plaintiffs, the United States, recover of the said Edward P. Bassett and E. H. Harger the sum of two thousand dollars, their debt aforesaid, and also their costs in this behalf expended, taxed to $10 80.

Afterwards, to wit, on the 8th day of June, A. D. 1866, came the defendants, by their attorney, and on their motion and by the consent of the district attorney, it is ordered that proceedings under the execution in this case be stayed until the further order of the court.

And afterwards, to wit. on the sixth day of July, A. D. 1866, came the defendants, and filed their motion to set aside the judgment, and for a new trial of this cause, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
*Northern District of Ohio:*

In circuit court of United States.

*Motion.*

UNITED STATES OF AMERICA
*vs.*
ORRIN G. OLMSTEAD, *et al.* } No. 1,489.

Now come the said defendants, Orrin G. Olmstead, Edward P. Bassett and E. H. Harger, and move the said court to set aside the judgment heretofore rendered by said court in the above-entitled action, and for a new trial therein.

By RANNEY & BOLTON,
*Att'ys for Def'ts.*

It is thereupon ordered that said motion be continued to the next term of this court.

And afterwards, on the said sixth day July, A. D. 1866, an agreed statement of facts was filed in the said clerk's office, which is in the words and figures following, to wit:

Circuit court of the United States, for the 7th judicial circuit and northern district of Ohio, May term, 1865.

THE UNITED STATES
*vs.*
ORRIN G. OLMSTEAD, EDWARD P. BASSETT, and E. H. Harger.

And it is hereby agreed by the parties in the above-entitled
13 action by J. M. Root, district attorney, as attorney for the United States, and Ranney & Bolton, as attorneys for the defendants, that the following is a correct statement of the various journal entries made in the case of the "United States *vs.* Orrin G. Olmstead," and comprises the facts to be presented to said court, whereon to base its decision in said above-entitled case.

Circuit court of the United States, for the northern district of Ohio, May term, 1865.

THE UNITED STATES
*vs.*
ORRIN G. OLMSTEAD. } No. 1,465.

*Indictment for stealing letters from the post-office.*

MAY 23d, 1865.

This day comes the district attorney on behalf of the United States, and the said defendant being present at the bar of the court,

on his motion he has leave to withdraw his plea of not guilty heretofore entered herein, and now the said indictment being read to said defendant, he for plea says, that he is guilty in manner and form as he is therein and thereby charged and indicted. It is therefore considered by the court that the said defendant, Orrin G Olmstead, be imprisoned in the county jail of Erie county, in this district, for the period of six months from this 23d day of May, in the year 1865, and that he pay to the United States a fine of two hundred dollars, ($200) and costs of this prosecution. Thereupon the said defendant is committed to the custody of the marshal of this district to be by him, as soon as possible, conveyed to said county jail of Erie county, in pursuance of said sentence..

Circuit court of the United States for the northern district of Ohio, June term, 1865.

THE UNITED STATES
*vs.*
ORRIN G. OLMSTEAD. } No. 1,465.

*Order for writ of habeas corpus.*

MAY 30, 1865.

This day came the district attorney, and on his application and motion, it is ordered that a writ of habeas corpus issue to the sheriff of Erie county. Ohio, commanding him to have the body of the said Orrin G. Olmstead, together with the day and cause of his detention, before this court, on Wednesday the 31st day of May instant, at ten o'clock in the morning, and said writ is accordingly issued.

Circuit court of the United States for the northern district of Ohio. June term, 1865.

14 THE UNITED STATES
*vs.*
ORRIN G. OLMSTEAD. } No. 1,465.

*Habeas corpus.*

JUNE 2, 1865.

The sheriff of Erie county, Ohio, having returned the writ of habeas corpus issued herein. and now having the body of the said Orrin G. Olmstead, here in this court, together with the day and cause of his caption and detention, as he was thereby commanded, it is ordered that said Orrin G. Olmstead be committed to the custody of the marshal of this district, to be by him safely kept until the further order of this court.

Circuit court of the United States for the northern district of Ohio, June term, 1865.

THE UNITED STATES
*vs.*
ORRIN G. OLMSTEAD. } No. 1,465.

*Indictment for stealing letters from the post-office.*

JUNE 10, 1865.

This day came the district attorney, on behalf of the United States, and this cause coming on for hearing, on the motion of the district attorney to set aside the order and sentence entered herein, on the 23d day of May last, and being argued by counsel, the court being now fully advised in the premises, doth order that the said order and sentence be, and the same is hereby set aside and vacated. And it is further ordered that the said defendant have leave to withdraw his plea of guilty, entered herein on said twenty-third day of May last.

Circuit court of the United States for the northern district of Ohio, June term, 1865.

THE UNITED STATES,
*vs.*
ORRIN G. OLMSTEAD. } No. 1465.

*Indictment for stealing letters from the post office.*

JUNE 14, 1865.

This day came the district attorney, on behalf of the United States, and it is ordered that the defendant enter into recognizance, with sufficient surety, in the sum of two thousand dollars, conditioned for his appearance here in this court from day to day during the present term, to answer to said indictment. Thereupon, the said defendant offers, as his sureties, Edward P. Bassett and E. H. Harger, who are by the court deemed sufficient, and the said Orrin G. Olmstead, as principal, and the said Edward P. Bassett, and E. H. Harger, as his sureties, here in open court acknowledge themselves, jointly and severally, to owe the United States of America, the sum of two thousand dollars to be levied of their and each of their goods and chattels, lands
15 and tenements, to and for the use of the United States, in case default be made in the condition of this recognizance, which is, that if the said defendant shall be and personally appear here in this court from day to day during the present term of this court, to answer to an indictment pending against him for stealing letters from a postloffice, and not depart the court without leave thereof, then this recognizance shall be void, otherwise to remain in full force and effect.

Circuit court of the United States for the northern district of Ohio, June term, 1865.

THE UNITED STATES
*vs.*
ORRIN G. OLMSTEAD. } No. 1,465.

*Indictment for stealing letters from post-office.—Recognizance entered June 14th, 1865.*

JUNE 15, 1865

This day came the district attorney, on behalf of the United States, and the defendant being three times solemnly called to come into court and answer to said indictment, as by the terms of his recognizance he was bound to do, came not and made default. Thereupon, Edward P. Bassett and E. H. Harger, bail for the said defendant, were three times solemnly called to come into court and bring with them the body of the said defendant, as by the terms of their recognizance they were bound to do, and the said sureties came not, but made default. It is therefore considered that the said recognizance be and the same is hereby declared forfeited. Whereupon, it is agreed that said first above-entitled case shall be submitted to said circuit court upon the preceding statement of journal entries, and said indictment contained in defendant's plea, as the facts of the case.

J. M. ROOT,
*Attorney of the United States.*
RANNEY & BOLTON,
*Attorneys for Defendants.*

And afterwards, to wit, at the September term of this court, A. D. 1866, this cause was continued until the January term, A. D. 1867. And at the January term, A. D. 1867, this cause was continued until the May term, 1867.

And afterwards, to wit, on the nineth day of August, A. D. 1867, being at the said May term, A. D. 1867, this cause came on to be heard on the motion of the defendants to set aside the judgment here-
16 tofore rendered in this cause, and for a new trial therein, and was argued by counsel. On consideration whereof, it is ordered that the judgments rendered against the said defendants in this cause in this court at the May term thereof, A. D. 1866, be and the same is hereby set aside, and that a new trial be had between the parties. And, thereupon, came the district attorney on behalf of the United States, and also came the said defendants, by Ranney & Bolton, their attorneys, and this cause coming on for a new trial upon the issues joined between the parties, and the agreed statements of facts filed herein on the sixth day of July, 1866, and which is hereby made a part of the record in this cause, and neither party requiring a jury, this cause is submitted to the court, and the court being fully advised in the premises, and the record set forth and alleged in the plaintiff's

declaration being inspected by the court, and it sufficiently appearing that there is such a record of recognizance, and the forfeiture thereof, as the plaintiffs have in their said declaration alleged, and the court further finding that there is no such record of judgment as the defendants have in their said second plea alleged and set forth. Whereupon, it is considered that the said United States ought to recover against the said Edward P. Bassett, and E. Harger, their debt aforesaid, and also their damages, by reason of the detention thereof, which damages are hereby assessed by the court at the sum of six cents. Therefore, it is considered that the said United States recover of the said Edward P. Bassett and E. H. Harger, the sum of two thousand dollars, their debt aforesaid, and six cents their damages aforesaid, and also their costs herein taxed to $52 91. And thereupon, the defendants, by Ranney & Bolton, their attorneys, except to the judgment of the court in this cause.

17 THE UNITED STATES OF AMERICA,
*Northern District of Ohio, ss:*

I hereby certify that the foregoing is truly taken and copied from the records of the proceedings of the circuit court of the United States, within and for the said northern district of Ohio.

In testimony whereof, I do hereto subscribe my name, and affix the seal of said court, this 27th day August, A. D. 1866.

[SEAL.] EARL BILL,
*Clerk of the said Circuit Court.*

Q

# In the Supreme Court of the United States.

DECEMBER TERM, 1869.

EDWARD P. BASSETT *et al.*,
*Plaintiffs in Error,*
*vs.*
THE UNITED STATES.
} No. 21.

*In error to the Circuit Court of the United States for the Northern District of Ohio.*

BRIEF OF THE UNITED STATES.

This is a suit brought on a recognizance given in said circuit court in May term, 1865, to wit: on the 14th day of June, of that year, by Orrin G. Olmstead, as principal, and Edward P. Bassett and E. H. Harger as sureties, with a condition that Olmstead should be and appear in said court from day to day during that term, to answer to an indictment pending against him for stealing letters from the post office, and should not depart the court without leave. In this civil suit Olmstead was not served with process. His sureties were, and pleaded, first, that there was no record of any such recognizance, and, second, that on the 23d day of May, 1865, in said court, Olmstead pleaded guilty to

said indictment, was sentenced to be imprisoned, and was imprisoned pursuant to said sentence, and that there was no indictment pending against Olmstead on the 14th day of June, 1865, the date of the recognizance, (printed transcript, pp. 6, 7, and 8.) To the second plea, the plaintiffs reply that there is no record of any such judgment. Upon the issues joined on these pleadings, the circuit court to which the cause was submitted, on the 7th day of May, 1866, finds that there is a record of such a recognizance, and of the forfeiture of it, and no record of any such judgment, and renders judgment in the civil suit for the United States, (printed transcript, p. 9;) and on the 8th day of said June execution is stayed until the further order of the court.

On July 6, 1866, a motion is made to set aside this judgment and for a new trial; and on the same day an agreed statement of facts is filed, (printed transcript, pp. 10–13) purporting to comprise the facts to be presented to the court whereon to base its decision in said civil suit. These facts are, substantially, that it appears by the entries in court that, on the 23d day of May, 1865, Olmstead was, on the plea of guilty to this indictment, sentenced to be imprisoned in jail and to pay a fine, and was committed to the custody of the marshal to be conveyed to jail pursuant to this sentence; that on May 30, 1865, a writ of *habeas corpus* was issued by the circuit court commanding the sheriff to have the body of Olmstead before it on the 31st

day of the same May; and on the 2d day of June, 1865, the sheriff made return to this writ, and produced the body of Olmstead in court, and Olmstead was committed to the custody of the marshal, to be kept until the further order of the court; that on June 10, 1865, the judgment and sentence of the court on the indictment were vacated, and Olmstead had leave to withdraw his plea of guilty; whereupon, on the 14th day of said June, Olmstead and his sureties entered into the said recognizance, and on the 15th day of said June he and his sureties were three times solemnly called in court and made default, and the recognizance was declared forfeited; and it is agreed (printed Transcript, p. 13) that said case "shall be submitted to said circuit court upon the preceding statement of journal entries and said indictment contained in defendant's plea, as the facts of the case."

The civil suit was continued from term to term, until, on the 9th day of August, 1867, being at the May term, 1867, the judgment against the defendants in the civil suit rendered at the May term, 1866, was set aside by the court, and a new trial ordered, and (printed transcript, pp. 13 and 14,) "thereupon came the district attorney on behalf of the United States, and also came the said defendants, by Ranney & Bolton, their attorneys, and this cause coming on for a new trial upon the issues joined between the parties, and the agreed statement of facts filed herein on the 6th day of July, 1866, and which is hereby made a part of the

record in this cause, and neither party requiring a jury, this cause is submitted to the court, and the court being fully advised in the premises, and the record set forth and alleged in the plaintiff's declaration being inspected by the court, and it sufficiently appearing that there is such a record of recognizance, and the forfeiture thereof, as the plaintiffs have in their said declaration alleged, and the court further finding that there is no such record of judgment as the defendants have in their said second plea alleged and set forth," the court gives judgment for the United States, to which the defendants, by their attorneys, except generally, but state no grounds of exception. The first paragraph of the printed transcript seems to have nothing to do with the case.

POINTS.

1. The finding of the court upon issues of fact in regard to its own records is final, no ruling upon matters of law having been asked for by the defendants and refused. An agreed statement of facts in regard to the records of the court. cannot prevent the court from inspecting its own records, as it did in this case, and finding according to the fact.

2. It is very doubtful if the circuit court at the May term, 1867, could set aside the judgment rendered in the civil suit in the same court at the May term, 1866, even although the motion to set aside this judgment was filed at the May term, 1866. The order setting aside this

judgment does not appear to have been made *nunc pro tunc*.

3. If there is any other question of law for this court in this record, it is whether the circuit court had the legal right, after having sentenced Olmstead to imprisonment on a plea of guilty to the indictment, and Olmstead had been sent to prison, pursuant to this sentence, at the same term of the court at which the sentence was rendered, to vacate this sentence and permit Olmstead to withdraw his plea of guilty and enter into a recognizance for his appearance to answer to the indictment. The crime charged was a misdemeanor.

Could the judgment and sentence of the court be vacated in this manner? The terms of the circuit court of the United States for the nothern district of Ohio are established by ch. 49 of the acts of 1863, (12 Stat., p. 657.) There is no June term of this court. Although in the agreed statement some of the journal-entries are headed *May term*, 1865, and some *June term*, 1865, yet from the statute and the averment in the declaration, (printed transcript, p. 4,) and the statement found on page 9 of the printed transcript, as follows: "And afterwards, to wit, at the September term of said court, A. D. 1865," it is evident that the sentence on the indictment was rendered at the same term in which it was vacated, to wit, at the May term, 1865. Could, then, during the same term, a judgment of imprisonment on an indictment partially executed be vacated by the court that rendered it, and the prisoner be held to

answer to the indictment? A judgment may be vacated by the court during the same term in was entered. Miller *vs.* Finkle, 1 Parker's Crim. R. 374; The King *vs.* Price, 6th East., 323; Hawkins, P. C. b. 2, c. 48, s. 20; Com. Dig. indictment N.; Albers *et al. vs.* Whitney *et al.*, 1 Story, 310; Cheang-Kee *vs.* The United States, 3 Wall., 320; Brush *et at. vs.* Robbins, 3 McLean, 486; Cameron *vs.* McRoberts, 3 Wheat., 591.

4. Olmstead was sentenced, on the indictment, to be imprisoned for six months, and to pay a fine of $200 and costs of prosecution. The first count of the indictment seems to charge no crime against the laws of the United States, and the second count seems to have been drawn under the 22d section of the Act of March 3, 1825, (4 Stat., 108,) charging Olmstead with stealing and taking from the post office a certain letter and package, for which the minimum punishment is two years. The sentence was, therefore, erroneous, and void.

E. R. HOAR.
*Attorney General.*
W. A. FIELD,
*Assistant Attorney General.*